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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/519,492	06/16/2005	Christian Mathicu	2590-108	5402

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EXAMINER

BLATT, ERIC D

ART UNIT	PAPER NUMBER
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3709

MAIL DATE	DELIVERY MODE
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07/11/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/519,492

Applicant(s)

MATHIEU ET AL.

Examiner

Eric Blatt

Art Unit

3709

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-11 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 12-30-04 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>12-30-04</u> | 6) <input type="checkbox"/> Other: ____ |

DETAILED ACTION

Claim Objections

1. Claims 1-11 are objected to because of the following informalities: claim 1 recites "A device for inserting implants" where it appears to intend "A device for inserting implants." Claim 6 recites "the means for viewing the passage" where elements 'the means for' and 'the passage' lack antecedent bases. Claim 10 recites "the means for retaining the implants" where elements 'the means for' and 'the implants' lack antecedent basis. Appropriate correction is required.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-4 and 7-11 are rejected under 35 U.S.C. 102(b) as being anticipated by Fluent et al. (US 4,223,674)

Regarding claim 1, Fluent discloses a device for inserting implants (Figure 1) comprising a gripping means 32, 34, a trocar 16 fixed at its proximal end to the gripping means 32, 34, and a push rod 42 configured to slide through the gripping means 32, 34 and the trocar 16. Regarding the gripping means 32, 34, although the device does show a separate handle 10, a user could additionally grip the device around elements

32 and 34, and the examiner thus interprets these components to comprise a gripping means. The gripping means 32, 34 comprises a rotary element 34 with an axis of rotation parallel to the trocar axis and comprising a plurality of tubular elements 20 (Figure 1A). While Figure 1A shows a tubular element 20 disposed within the trocar 16, the tubular elements are ordinarily contained within cavities 54 in the rotary element 34 and are mounted so as to be able to be aligned successively with the trocar 16 (Figure 2). The rotary element 34 forms an integral part and extends along most of the length of the gripping means 32, 34 and each tubular element is designed to contain at least one implant 18.

Regarding claims 2-4, each tubular element 20 forms a part distinct from the rotary element 34 and may be inserted into the rotary element 34 (Figures 1A and 2). There is a cover 58 that prevents withdrawal of the tubular elements 20 from the rotary element 34.

Regarding claims 7 and 8, the gripping means 34, 34 has a flattened section 32. The rotary element 34 comprises a knurled wheel (Figure 1).

Regarding claims 9 and 10, each tubular element 20 has a flexible tongue 19 arranged inside the tubular element 20 that is capable of retaining the implants 18 within the tubular element 20 (Col. 3, Lines 5-8, Col. 5, Lines 23-27).

Regarding claim 11, the device comprises means 56, 60 which retain the rotary element (Figure 2, Col. 5, Lines 32-38) and prevent withdrawal of the rotary element 34 from the gripping means 32, 34.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 5 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fluent et al. (US 4,223,674) in view of Fucci (US 5,607,432).

Regarding claims 5 and 6, Fluent discloses all elements of claims 5 and 6 except that the device comprises a means, particularly a window (claim 6), capable of allowing a user to view the passage of implants through the device. Fucci discloses a device (Figure 4) with a window 62 capable of allowing a user to view the passage of implants through the device. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the apparatus of Fluent to comprise a window in order to allow a user to view the passage of implants through the device as taught by Fucci. (Col. 4, Line 65-Col. 5, Line 3)

Conclusion

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Moore (4,086,914): An injector for inserting small implants.

Kaye et al. (4,576,591): A rotary medicament implant injector.

Harman (4,661,103): An injector for inserting multiple implants.

Leonard et al. (4,846,793): An injector for inserting multiple implants.

Cordis (2,850,013): A rotary pellet injector.

Phillips et al. (4,673,387): A rotary pellet injector.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Eric Blatt whose telephone number is (571) 272-9735. The examiner can normally be reached on Monday to Friday, 7:30 A.M. to 5:00 P.M. EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jeff Smith can be reached on (571) 272-6763. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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